CHELLAPPAH v. OFFICIAL ASSIGNEE

[O.C.J. (Raja Azlan Shah J.) January 21, 1970]

[Kuala Lumpur — Originating Motion No. 3 of 1969]

Bankruptcy — Claim on bankrupt's estate — Unlicensed moneylender — Whether claim enforceable — Moneylenders Ordinance, 1951, s. 15.

Moneylenders — Unlicensed monylender — Evidence of subsequent loans — Whether relevant and admissible as showing lender a moneylender at time of transaction — Moneylenders Ordinance, 1951.

The applicant as a creditor of a bankrupt sought to set aside the respondent's rejection of his proof of a debt amounting to $1,565 on the ground that he was an unlicensed moneylender and therefore his claim was unenforceable under section 15 of the Moneylenders Ordinance. The respondent had evidence that the applicant had on two subsequent occasions made loans to two different persons at interest.

Held, dismissing the application: (1) loans made during a reasonable period immediately preceding the transaction in question are relevant and admissible;

(2) the court is not prevented from taking into consideration loans made after the date of the relevant transaction in order to establish the required regularity, continuity and system in moneylending business;

(3) evidence of subsequent loan is very material in order to show that a person was a moneylender at the time of a particular transaction, and it was perfectly proper for the respondent in this case to take into account those two subsequent loans to show that the applicant was an unlicensed moneylender.

Cases referred to:-

(1) *Nash* v. *Layton* [1911] 2 Ch. 71.

(2) *Marshall* v. *Goulston Discount (Northern) Ltd.* [1967] Ch. 72.

ORIGINATION MOTION.

G. Vadiveloo for the applicant.

Chong Hee Choy for the Official Assignee.

Raja Azlan Shah J.: The applicant as a creditor of a bankrupt lodged with the Official Assignee a proof of debt amounting to $1,565 against the bankrupt's estate. The claim is based on an 'on demand' note dated 3rd May 1956 for $1,000 bearing interest at 12% per annum. The Official Assignee rejected the said proof on the ground that the creditor was an unlicensed moneylender and therefore his claim was unenforceable under section 15 of the Moneylenders Ordinance. Subsequent investigations by the Official Assignee proved that the applicant had on two subsequent occasions made loans of $2,600 and $347 to two different persons at interest of 18 and 12% per annum respectively.

This is an application to set aside the decision of the Official Assignee. It is said on his behalf that respondent erred in taking into consideration those two subsequent loans in order to prove the required regularity, continuity and system which is characteristic of carrying on a moneylending business.

It is established law that loans made during a reasonable period immediately preceding the transaction in question are relevant and admissible: see *Nash* v. *Layton*.[1] It seems to me that there is nothing in *Nash* v. *Layton* which prevents the court from taking into consideration loans made after the date of the relevant transaction in order to establish the required regularity, continuity and system in moneylending business. In fact that point was not argued or discussed in that case. There is the authority of *Marshall* v. *Goulston Discount (Northern) Ltd.*[2] for the proposition that evidence of subsequent loan is very material in order to show that a person was a moneylender at the time of a particular transaction. In the light of this authority, it was perfectly proper for the respondent to take into account those two subsequent loans to show that the applicant was an unlicensed moneylender on 3rd May 1956.

The application is dismissed with costs.

Application dismissed.

Solicitors: *D. P. Xavier & Co.*

JOHANNES KOPLAN v. AW CHEN

[F.C. (Ong C.J. (Malaya), Gill F.J. & Abdul Aziz J.) January 26, 1970]

[Ipoh — Federal Court Civil Appeal No. X.65 of 1969]

Road Traffic — Third party insurance — Running down action — Whereabouts of insured unknown — Service of writ could not be effected.

Practice and Procedure — Running-down action — Order for substituted service — Appeal by insurers in own name to have order set aside — Insurers not party to action — Policy giving insurers control of proceedings.

The plaintiff was a passenger in a motor-car on May 16, 1965 when another vehicle owned and driven by the defendant, an Austrian engineer on a temporary assignment in Perak, ran into it from behind, causing the plaintiff serious bodily injury. Some twelve months later, when the plaintiff's solicitors were instructed to issue writ in the action, it was discovered that the defendant had left Malaya on August 24, 1965 with no intention of returning. Several attempts were made to effect service on the defendant but without any success. Substituted service was allowed by the court and eventually on May 21, 1968 interlocutory judgment was signed against the defendant. On May 21, 1968 the plaintiff applied for assessment of damages on a date to be fixed by the court. It was at this stage that the National Insurance Co. Ltd. the insurers of the defendant's vehicle, intervened. They applied on July 20, 1968 for the order of substituted service and all subsequent proceedings to be set aside, on a variety of technical grounds, of which the principal one was that there was no possibility of the notice having been brought to the defendant's attention. The judge did not agree and dismissed the application with costs ([1969] 2 M.L.J. 190). Against that order the insurers appealed.

At the hearing of the appeal, on the court's suggestion, counsel on both sides readily agreed to an order, by consent, that the interlocutory judgment be set aside and the insurers be allowed to appear and defend the action in the name of the defendant, they paying to the plaintiff all costs thrown away by reason of their default.

Per Curiam: "In making the suggestion that we did, we might mention that we had in mind practical considerations. Legal technicalities which stand in the way of any aggrieved person seeking and obtaining his remedy in court should not be allowed to prevail so as to frustrate any just claim. Compulsory insurance against third party risks has made alterations in the common law whereby insurers are made directly liable to satisfy judgments against their insured. The